86-719

No. .....

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1986

MARRELL WRIGHT EDWARDS,
ADMINISTRATRIX, CTA, THE ESTATE OF
HENRY THOMAS EDWARDS, DECEASED,

Appellant,

vs.

JANIE LEE (STILES) EDWARDS,

Appellee.

ON APPEAL FROM THE TENNESSEE SUPREME COURT

SUPPLEMENTAL APPENDIX TO JURISDICTIONAL STATEMENT

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22 pp

HENRY THOMAS EDWARDS,
now styled MARRELL WRIGHT
EDWARDS, ADMINISTRATRIX,
C.T.A., THE ESTATE OF
HENRY THOMAS EDWARDS,
DECEASED,

App. No.
84-74-II

Plaintiff/Appellee,

vs.

JANIE LEE (STILES)
EDWARDS,

Defendant/Appellant.

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

THE HONORABLE WALTER C. KURTZ, JUDGE

FILED: NOV. 15, 1984

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AFFIRMED IN PART; MODIFIED;
AND REMANDED

WILLIAM C. KOCH, JR., JUDGE

HENRY THOMAS EDWARDS,
now styled MARRELL WRIGHT
EDWARDS, ADMINISTRATRIX,
C.T.A., THE ESTATE OF
HENRY THOMAS EDWARDS,
DECEASED,

Plaintiff/Appellee,

App. No.
84-74-II

VS.

JANIE LEE (STILES)
EDWARDS,

Defendant/Appellant.

OPINION

Janie Lee Stiles Edwards, the first wife of Henry T. Edwards, now deceased, is seeking to require that her former husband's estate and his second wife, Marrell Wright Edwards, continue to honor the provision of the couple's amended divorce decree requiring Mr. Edwards to pay Janie Edwards periodic alimony for the rest of her life as long as she remained unmarried. The Fifth Circuit Court for Davidson County, on the record alone without a trial, determined that Mr. Edwards' death was a material change in circumstances warranting a re-examination of the amended divorce decree. Thereupon, the trial court entered an order directing that Mr. Edwards' estate pay Janie Edwards $5,700 consisting of $2,100 for past due alimony not paid at the time of the decision and $3,600 representing monthly alimony payments through January 31, 1985. The trial court further decreed that Janie Edwards' right to receive alimony payments would be extinguished on January 31, 1985. Janie Edwards has perfected this appeal.

We are called upon in this appeal to determine whether a divorced wife whose husband is obligated to pay her alimony for the rest of her life or until she remarries can, upon her, former husband's death, look to funds held jointly by her former husband and his second wife for the satisfaction of his continuing alimony obligations when these funds have been deposited in a joint bank account with a right of survivorship in the second wife.

Based upon the limited facts[1] contained in the record before us, we have determined that the funds contained in a joint bank account of a husband and his second wife can be used to satisfy a continuing obligation to pay alimony to his first wife.

Therefore, for the reasons stated herein, we modify the judgment of the trial court and remand the case for further proceedings.

Janie Edwards, now over 70 years of age, obtained a divorce from Henry T. Edwards, her husband for thirty-eight years, on October 30, 1974. The final decree awarding Mrs. Edwards a divorce based upon cruel and inhuman treatment incorporated the following provision with regard to the payment of alimony *in futuro:*

> 8. It is further agreed between the parties that the Wife shall receive from the Husband, as continuing alimony, $400.00 per month and that said payment shall be made by the Husband on a monthly basis,

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[1] The record before us consists of the pleadings and certain limited discovery documents which contain no detailed information concerning the precise terms of the bank accounts maintained by Mr. Edwards and his second wife or detailed information concerning the manner in which the couple held their real property.

> and shall be paid on the first day of every month after the entry of the final divorce decree herein, and said payment shall continue on the first of every month for as long as the Wife lives or until she remarries, and, in that event, the alimony payments shall cease. Provided that the parties further agree that the matter of alimony remains before the Court for an equitable amount to be set in the event changes in circumstances occur.

On October 20, 1974, Mr. Edwards married Marrell Wright Edwards, now 69 years of age. It was the second marriage for both of them. Mrs. Marrell Edwards possessed a separate estate when she married Mr. Edwards.

On March 10, 1980, Mr. Edwards petitioned for a decrease in his alimony payments based upon the decrease in his income caused by his retirement. Mrs. Janie Edwards contested this request and demanded an increase in alimony because of the increases in her cost of living. On November 7, 1980, the trial court entered an order decreasing Mr. Edwards' monthly alimony obligation from $400 per month to $300 per month. This order also specifically provided:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that either party retains the right to come into Court upon a substantial financial change in circumstances in order to modify the decree of alimony as heretofore ordered by the Court.

On December 28, 1981, Mr. Edwards and his wife, Marrell, sold a cottage they owned in Wilson County for

$56,500.[2] After paying the mortgage on the property, they took back a purchase money mortgage on the home which yielded income of $440.44 each month.

On January 1, 1982, Mr. Edwards sold his stock in the company where he was formerly employed and received $63,833.10. He retained this stock as a result of the property settlement in the divorce of his first wife.

On September 23, 1982, Mr. Edwards and his wife, Marrell, purchased certain real property located in Vero Beach, Florida for $58,768 in cash from their joint funds.

Mr. Edwards died testate[3] on June 9, 1983, in Ft. Pierce, Florida. His widow, Marrell Edwards, was named executrix of his estate. In addition to their home in Williamson County and the property located in Vero Beach, Florida, the couple's joint assets included four joint bank accounts totaling $67,565.50, an individual retirement account in Mr. Edwards' name in the amount of $108,260.15, and certain other items of personal property. This property as well as other jointly held assets went to his widow by operation of law and were not listed as part of his estate.

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[2] Mr. Edwards received this property as a result of the property settlement incorporated in the divorce decree entered on October 30, 1974. In consideration for Marrell Edwards' agreement to become obligated on an $18,000 loan to pay off a portion of his divorce settlement, Mr. Edwards conveyed Marrell Edwards an undivided half interest in this property.

[3] Mr. Edwards had executed a will on May 2, 1980. It contained provisions for establishing a marital deduction trust as well as a residual trust naming his wife, Marrell, as the beneficiary. At the oral argument of this case on September 5, 1984, counsel for Marrell Edwards stated, without contradiction, that these trusts were never established.

At the time of his death, Mr. Edwards owned in his own name certain stock in Mid-South Investments, Inc. valued at $16,323.52 that he had received in the property settlement with his first wife. Including this stock, Mr. Edwards possessed $22,323.52 worth of assets in his own name. As of December 29, 1983, his estate had incurred $16,934.55 in expenses relating to his death.

Upon Mr. Edwards' death, Mrs. Marrell Edwards received all the real and personal property they held jointly and as tenants by the entireties. As a result, her income, including Social Security payments resulting from her husband's death, approximates $2,500 per month.[4]

On the other hand, the record shows that Mrs. Janie Edwards' income in 1982 was $4,913.28 of which $3,600 represented alimony payments by Mr. Edwards during 1982. The record is not clear concerning the amount of Mrs. Janie Edwards' income following Mr. Edwards' death.[5] However, this record clearly supports the conclusion that her income remains very modest and is barely able to provide her with minimally adequate support.

Mrs. Janie Edwards received her last alimony payment in June, 1983. On November 14, 1983 (and again on November 18, 1983, and November 23, 1983), Mrs. Janie

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[4] This monthly income is comprised of $440.44 per month in payments from the purchase money mortgage resulting from the 1981 sale of the Wilson County Cottage; $1,335 per month from Mr. Edwards' IRA; and $755 in Social Security payments.

[5] While it may be assumed that her income would decrease if the alimony payments were discontinued, there is no proof in the record concerning the amount of social security benefits Mrs. Janie Edwards is entitled to receive pursuant to 20 C.F.R. § 404.336 (1984) which enables a surviving divorced spouse to receive widow's benefits.

Edwards filed a motion to substitute Mrs. Marrell Edwards, the administratrix of her husband's estate, as the cross-defendant in the original divorce action and to receive the divorce action for further proceedings. An order granting this motion was entered on December 2, 1983.

On December 13, 1983, Mrs. Janie Edwards filed a petition to increase the amount of her alimony *in futuro* to $400 per month for the rest of her life and to reduce to judgment the current arrearage in alimony payments that had not been made since June, 1983. Mrs. Janie Edwards alleged that while her former husband's estate did not contain sufficient funds to discharge this obligation, Mrs. Marrell Edwards should be required to do so from property held jointly with her husband at the time of his death because Mr. Edwards had made conveyances to Marrell Edwards in violation of Tenn. Code Ann. § 66-3-301 *et seq.* which had the effect of defeating his continuing obligation to pay alimony to Mrs. Janie Edwards for the rest of her life or until she remarried.

On December 15, 1983, Mrs. Marrell Edwards moved to terminate alimony payments to Mrs. Janie Edwards based upon the material change in circumstances caused by her husband's death.

The trial court considered these motions on the record and on February 14, 1984, entered an order

(1) finding that Mr. Edwards' death was a material change in circumstance warranting a reconsideration of the amended alimony *in futuro* award to Mrs. Janie Edwards;

(2) finding that Mr. Edwards had not made any fraudulent conveyances to his wife, Marrell, for the

purpose of defeating his alimony *in futuro* obligations;

(3) denying Mrs. Janie Edwards' request that her alimony be increased to $400 per month;

(4) finding that Mrs. Janie Edwards was entitled to the payment of alimony at the rate of $300 per month from July 1, 1983 through January 31, 1984;

(5) finding that Mrs. Janie Edwards was entitled to continue to receive alimony in the amount of $300 per month from February 1, 1984 through January 31, 1985, at which time any further obligation to pay alimony to Mrs. Janie Edwards would cease; and

(6) making provision for attorneys fees.

Mrs. Janie Edwards has perfected this appeal raising two issues:[6] first, that during his lifetime Mr. Edwards made fraudulent conveyances having the effect of defeating her claim to alimony *in futuro* for the rest of her life and second, that she was entitled to an increase in her alimony payment.

I.

Mr. Edwards' Continuing Alimony Obligation

Alimony is an allowance for the sustenance of a spouse following a divorce. *White v. Bates*, 89 Tenn. 570,

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[6] Mrs. Janie Edwards' brief refers erroneously to certain "Assignment of Error." Tenn.R.App.P. 3(h) provides: "Assignments of error are abolished." Tenn.R.App.P. 27(a)(4) now provides that the appellate court will be informed of the issues presented on appeal through the brief filed by the appellant. Pursuant to our authority under Tenn.R.App.P. 2, we are treating Mrs. Janie Edwards' "assignment of error" as the issues she desires this Court to consider.

572, 15 S.W. 651, 652 (1891) and *Livingston v. Livingston,* 58 Tenn.App. 271, 282, 429 S.W.2d 452, 457 (1967). It is based upon a husband's obligation to continue to support his former spouse. *Rush v. Rush,* 33 Tenn.App. 496, 503, 232 S.W.2d 333, 336 (1949).

While there is no mathematical formula that can be used to determine the proper amount of alimony, *Walker v. Walker,* 656 S.W.2d 11, 14 (Tenn.App. 1983), our courts, guided by the criteria contained in Tenn. Code Ann. § 36-5-101(d), generally look to the need of the former spouse as well as the obligor-spouse's ability to pay. *Fisher v. Fisher,* 648 S.W.2d 244, 246-47 (Tenn. 1983) and *Aleshire v. Aleshire,* 642 S.W.2d 729, 733 (Tenn.App. 1981), *aff'd Aleshire v. Aleshire,* Tenn. (Filed at Nashville, Nov. 22, 1982).

Traditionally, our courts ruled that a husband's obligation to pay alimony ends at his death. *Brandon v. Brandon,* 175 Tenn. 463, 465, 135 S.W.2d 929, 930 (1940). However, more recently there has been a recognition that a husband can bind his estate to continue to pay alimony after his death as long as there is clear proof of his intent to do so. *Bringhurst v. Tual,* 598 S.W.2d 620, 621 (Tenn. App. 1980). See also *Smith v. Phelps,* 218 Tenn. 369, 374-75, 403 S.W.2d 747, 749 (1966) and *In re Moore's Estate,* 34 Tenn.App. 131, 148, 234 S.W.2d 847, 854 (1949).[7]

We need not address the question of whether Mr. Edwards intended that his obligation to pay Mrs. Janie

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[7] There is a difference of opinion concerning the standard of evidence necessary to prove a clear intention that an obligation to pay alimony continue after the husband's death. See 24 Am.Jur.2d *Divorce & Separation* § 676 (1983); 27A C.J.S. *Divorce* § 240(b) (1959); Annot., 39 A.L.R.2d 1406 (1955).

Edwards alimony would continue after his death. Both parties have conceded that this was his intention, and so we need not look behind this agreement. For the purposes of this opinion, we construe the language contained in the divorce decree entered on October 30, 1974, as creating an obligation to pay alimony that can continue after Mr. Edwards' death.

II.

Mr. Edwards' Death As A Changed Circumstance

However, even though we have determined that Mr. Edwards' obligation to pay alimony lives on after his death, it is clear that the trial court has the authority, upon a proper showing, to re-examine the alimony award and to make adjustments dictated by material changes in the circumstances. *Perry v. Perry*, 183 Tenn. 362, 364, 192 S.W.2d 830, 830-31 (1946) and *Jones v. Jones*, 659 S.W.2d 23, 24 (Tenn.App. 1983). See also Tenn Code Ann. § 36-5-101(a)(1).

Both parties agreed[8] and the trial court found that Mr. Edwards' death was a changed circumstance warranting a re-examination of the amended alimony award to Mrs. Janie Edwards. We agree that the death of an obligor-spouse is a changed circumstance that warrants a re-examination of an award for periodic alimony. See *First National Bank in St. Petersburg v. Ford*, 283 So.2d 342, 345 (Fla. 1973) and *Van Haltern v. Van Haltern*, 352 Mich. 286, 88 N.W.2d 485, 487 (1958). The payment of

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[8] The parties during argument, however, took differing views on how this change of circumstances affected Mrs. Janie Edwards' continuing need for alimony.

alimony, among other things, is a function of the spouse's ability to pay as well as each parties' separate assets. *Aleshire v. Aleshire,* 642 S.W.2d 729, 733 (Tenn.App. 1981), *aff'd Aleshire v. Aleshire,* Tenn. (Filed at Nashville, Nov. 22, 1982), and Tenn. Code Ann. § 38-5-101(d)(1) & (6). Death will, of necessity, have a direct and final bearing upon the deceased spouse's earning capacity, ability to pay, and the status of any separate assets which, on death, become the property of others through devise or otherwise.

III.

The Application of Tenn. Code Ann § 66-3-301 et seq.

Mrs. Janie Edwards contends that certain of the financial dealings between Mr. Edwards and his second wife placed his assets beyond the reach of her claims for alimony and were, therefore, fraudulent conveyances in violation of Tennessee's version of the Uniform Fraudulent Conveyance Act, Tenn. Code Ann. § 66-3-301 *et seq.* There is no question that Mrs. Janie Edwards is a creditor for the purposes of our fraudulent conveyance laws because she is a former wife seeking alimony payments that have been ordered judicially. *Wilhoit v. Castell,* 62 Tenn. 419, 423 (1874); *Boils v. Boils,* 41 Tenn. (1 Cold.) 284, 287-88 (1860); and *Taylor v. Taylor,* 6 Tenn.Civ.App. 268, 273 (1915).

Without providing this Court with a detailed discussion concerning why these transactions should be considered fraudulent conveyances, counsel for Mrs. Janie Edwards, in his brief, points to the following transactions involving Mr. Edwards and his second wife as ones which adversely affect her:

(a) the 1981 sale of the cottage located in Wilson County that Mr. Edwards received in the 1974 property settlement with his first wife;

(b) the 1980 sale of TVESCO stock Mr. Edwards received in the 1974 property settlement with his first wife;

(c) the proceeds from Mr. Edwards' IRA at First American National Bank that Mrs. Marrell Edwards is receiving because she is Mr. Edwards' surviving spouse; and

(d) Mr. Edwards' maintenance with his second wife of four joint bank accounts containing $67,563.65.

While conveyances between a husband and wife are not inherently fraudulent, they should be closely scrutinized because they awaken suspicion and can give greater weight to other existing unfavorable circumstances that may cause a transaction to be found in violation of Tenn. Code Ann. § 66-3-301 *et seq.* *Robinson v. Frankel*, 85 Tenn. 475, 478, 3 S.W. 652, 653 (1887); *Union Bank v. Chaffin*, 24 Tenn.App. 528, 534, 147 S.W.2d 414, 418 (1940); and *Farmers Bank of Lynchburg v. Farrar*, 4 Tenn.App. 186, 192 (1926).

Tenn. Code Ann. § 66-3-305 provides:

> Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual interest, if the conveyance is made or the obligation is incurred without a fair consideration.

In order for a conveyance to be found fraudulent under this section, it is necessary to show only that the transfer was made "without fair consideration" and that as a result of the conveyance the debtor "will be thereby ren-

dered insolvent," *Hicks v. Whiting*, 149 Tenn. 411, 444, 258 S.W. 784, 794 (1924) and *Ottarson v. Dobson & Johnson, Inc.*, 58 Tenn.App. 408, 419-20, 430 S.W.2d 873, 877-78 (1968). No proof of actual intent to defraud is required if these two elements have been proved. *Marsh v. Galbraith*, 31 Tenn.App. 482, 486-87, 216 S.W.2d 968, 970 (1948) and *Scarborough v. Pickens*, 26 Tenn.App. 213, 219, 170 S.W.2d 585, 587 (1942).

At the outset, we conclude that neither Mr. Edwards' sale of his TVESCO stock in 1980, nor the sale of the Wilson County cottage in 1981, nor Mrs. Marrell Edwards' receipt of the proceeds from Mr. Edwards' IRA account in 1983 are fraudulent conveyances within the meaning of Tenn. Code Ann. § 66-3-305. In each instance, adequate consideration was given, and none of the transactions left Mr. Edwards insolvent at the time they were made or rendered his estate unable to meet his obligations upon his death.

The same, however, cannot be said for the four joint bank accounts containing $67,565.65. Whether these funds were held by Mr. Edwards and his second wife as joint tenants with a right of survivorship or as tenants by the entirety,[9] the passage of the funds in these accounts to Mrs. Marrell Edwards upon her husband's death can be set aside if the claims of creditors are thereby defeated. *Griffin v. Prince*, 632 S.W.2d 532, 537 (Tenn. 1982). See

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[9] The ownership interest of the Edwards in these accounts depends upon the contractual agreements with the financial institutions involved. *Griffin v. Prince*, 632 S.W.2d 532, 534-35 (Tenn. 1982) and *Lowry v. Lowry*, 541 S.W.2d 128, 131-32 (Tenn. 1976). There is no proof in the record concerning these contractual agreements.

also *United States v. Kerr*, 470 F.Supp. 278, 281 (E.D. Tenn. 1978) and *Corbett v. Hunter*, 292 Pa. Super. 123, 436 A.2d 1036, 1037-38 (1981).

These accounts were not fraudulent conveyances when they were established because they did not render Mr. Edwards insolvent nor is there any proof that the consideration was inadequate. The funds contained in these accounts are comingled assets originally belonging to Mr. Edwards and his second wife separately. During Mr. Edwards' lifetime, there is no question that he could have used these funds to meet his alimony obligations to his first wife without permission of his second wife. However, it is the gratuitous transfer of these funds to Mrs. Marrell Edwards upon Mr. Edwards' death that runs afoul of Tenn. Code Ann. § 66-3-305. Were it not for the operation of Mrs. Marrell Edwards' survivorship rights, these funds would continue to be available to satisfy Mrs. Janie Edwards' alimony claims. There was no new consideration given for the operation of these rights of survivorship, and as a result of their operation, Mr. Edwards' estate was rendered unable to meet his continuing alimony obligations to his first wife.

The Court of Appeals of New York faced a similar situation in a case wherein the decedent's son sought to obtain unpaid child support payments from his father's second wife who was acting as executrix of her husband's estate. At issue were certain mutual funds that had been held by the decedent and his second wife as joint tenants with rights of survivorship. The New York Court of Appeals found that the operation of the decedent's second wife's survivorship interest amounted to a fraudulent con-

veyance thereby rendering the jointly held assets available to satisfy the claims of the decedent's son. *In re Granwell,* 20 N.Y.2d 91, 228 N.E.2d 779, 782-83 (1967). See also *Rupp v. Kahn,* 246 Cal.App.2d 188, 55 Cal.Rptr. 108, 112-113 (1966).

Based upon the foregoing, we conclude that the $67,565.65 in the four joint bank accounts is available to the Court in determining what disposition should be made of Mrs. Janie Edwards' request for alimony following her former husband's death.

IV.

Statutory Availability of Funds in Joint Bank Accounts

The Legislature has provided another basis to find that the funds held in the joint bank accounts of Mr. Edwards and his second wife were available to Mrs. Janie Edwards.

In *Griffin v. Prince,* 632 S.W.2d 532 (Tenn. 1982), the Tennessee Supreme Court held that a creditor of a husband could not garnish funds in a bank account owned jointly by the husband and his wife. In response to this decision, the Legislature passed Chapter 110, Public Acts of 1983 which amended Tenn. Code Ann. § 45-2-703(a) pertaining to bank deposits in two or more names. As amended, this section now provides, in part, that

> Any balance so created shall be subject to assignment by, or the claim of any creditor of, either depositor, as if such depositor were the sole owner of the funds; provided, however, that if such creditor realizes its claim, by garnishment, set off, or otherwise, any other depositor may, by appropriate action against the creditor, establish such rights as that depositor may have in the funds.

The effect of this legislation is to strip bank accounts held by married persons as tenants by the entirety of all the incidents of ownership usually attached to such tenancy. Thus, the funds in joint bank accounts of married persons have become available to satisfy the claims of creditors of one of the spouses.

We have already determined that Mrs. Janie Edwards is a creditor of her former husband. Therefore, Tenn. Code Ann. § 45-2-703(a) provides her with a means of access to the bank accounts maintained by Mr. Edwards and his second wife.

V.

Alimony Award to Mrs. Janie Edwards

Having determined that the funds in the joint bank accounts of Mr. Edwards and his second wife are available for use to satisfy Mrs. Janie Edwards' continuing expectation of alimony, we now consider whether the amended periodic alimony award of $300 per month should be modified as a result of Mr. Edwards' death. We think that it should.

While Mr. Edwards' death has a direct effect upon his ability to pay alimony, it has no effect upon Mrs. Janie Edwards' need for continuing support. She is seventy years of age, and it would not be reasonable to expect that she can be gainfully employed to aid in her support. Prior to her former husband's death, her annual income was $4,913.28. This consisted of $3,600 in alimony payments as well as $1,313.28 in interest from funds she received in the 1974 property settlement accompaning her divorce from Mr. Edwards. No more is required to find that Mrs. Janie Edwards is in need of continuing sustenance.

However, we do not think that Mrs. Janie Edwards should continue to receive periodic alimony payments for the rest of her life. This would require Mrs. Janie Edwards and Mrs. Marrell Edwards to maintain a continuing relationship which would be a source of discomfort to both. It would also be the source of continuing friction between the parties were there future requests to alter the amount of alimony or were the assets being used to meet this alimony obligation depleted. When faced with similar situations, other courts have determined that an alimony *in futuro* award should be modified to an alimony *in solido* award upon the death of the obligor-spouse. See *First National Bank in St. Petersburg v. Ford,* 283 So.2d 342, 345 (Fla. 1973) and *Van Haltern v. Van Haltern,* 351 Mich. 286, 88 N.W.2d 485, 487 (1958). Likewise, we find that Mrs. Janie Edwards should receive an alimony *in solido* award to be paid from the funds available in Mr. Edwards' separate estate and from the funds in the joint bank accounts owned by Mr. Edwards and his second wife at the time of his death. Such an award will precisely identify Mrs. Janie Edwards' right and will finally resolve this matter between the parties.

We have determined, as the trial court did, that there is no basis to alter the monthly rate at which Mrs. Janie Edwards' alimony has been accruing. Thus, we affirm the trial court's determination that Mrs. Janie Edwards should receive $2,100 for past due alimony.

Mrs. Janie Edwards' normal life expectancy at this time is approximately thirteen years. Were she to continue to receive $300 per month for this period, she would receive a total of $46,800. However, the present value of

this award compounded at ten per cent interest[10] would be approximately $36,000. Therefore, in recognition of Mrs. Janie Edwards' precarious financial situation, the trial court's award of alimony to Mrs. Janie Edwards is modified to provide that she be awarded $38,100 to be paid from the funds remaining in Mr. Edwards' separate estate and from the funds remaining in Mr. Edwards' bank accounts at the time of his death.

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[10] Tenn. Code Ann. § 47-14-121 sets a ten percent (10%) per annum rate for use on post-judgment awards.

IN THE FIFTH CIRCUIT COURT
FOR DAVIDSON COUNTY, TENNESSEE

JAMIE LEE STILES
EDWARDS,

Plaintiff,

vs. NO. 72095

MARRELL WRIGHT
EDWARDS,
Administratrix, C.T.A.,

Defendant.

ORDER

This cause came on to be heard before the Honorable Walter Kurtz, Judge of the Fifth Circuit Court, upon Motion of Marrell Wright Edwards, Administratrix, C.T.A. of the Estate of Henry Thomas Edwards ("Defendant"), to terminate future alimony payments to Janie Lee Stiles Edwards ("Plaintiff"), the Petition by Plaintiff to reinstate and increase alimony and reduce the arrearage to judgment, Interrogatories and Affidavits of record, statements of counsel, Briefs submitted by the parties and the entire record, from all of which the Court finds:

1. That Plaintiff is entitled to arrearage at the rate of Three Hundred ($300.00) Dollars per month from July 1, 1983 through January 31, 1984;

2. That Plaintiff is entitled to continuation of alimony in the amount of Three Hundred ($300.00) Dollars per month from February 1, 1984 through January 31, 1985;

3. That Plaintiff is not entitled to an increase in alimony from Three Hundred ($300.00) Dollars to Four Hundred ($400.00) Dollars per month;

4. That Defendant has experienced such a change of circumstances as to justify a termination of alimony;

5. That Defendant did not transfer assets in violation of Tennessee Code Annotated Section 66-3-301 through Section 66-3-314, the Uniform Fraudaulent Conveyance Act;

6. That counsel for Plaintiff is entitled to a reasonable attorney's fee for professional services rendered in this matter.

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiff have and recover from the Defendant the amount of Five Thousand Seven Hundred ($5,700.00) Dollars as a claim against the Estate of Henry Thomas Edwards, deceased, of which amount Two Thousand One Hundred ($2,100.00) Dollars is currently due and owing and Three Thousand Six Hundred ($3,600.00) Dollars is due and payable at the rate of Three Hundred ($300.00) Dollars per month beginning February 1, 1984.

It is further ORDERED, ADJUDGED and DECREED that Lucien Dale, counsel for Plaintiff, is entitled to $..... as compensation for professional services rendered in this cause as a further claim against the said Estate.

Enter this the ..... day of ....., 1984.

.....

JUDGE

APPROVED FOR ENTRY:

/s/ Clark H. Tidwell
Attorney for Marrell Wright Edwards,
Administratrix, C.T.A. of the Estate
of Henry Thomas Edwards
24th Floor, L & C Tower
Nashville, Tennessee 37219

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order has been sent to Mr. Lucien Dale, Attorney for Janie Lee Stiles Edwards, Suite 205, Ambrose Building, 162 Fourth Avenue North, P.O. Box 2868, Nashville, Tennessee 37219 on this the 7th day of February, 1984.

/s/ Clark H. Tidwell